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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,070	10/31/2003	Bernhard Awolin	J&J-5083	3738
27777	7590	05/13/2009	EXAMINER	
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			HAND, MELANIE JO	
			ART UNIT	PAPER NUMBER
			3761	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/700,070

**Applicant(s)**

AWOLIN ET AL.

**Examiner**

MELANIE J. HAND

**Art Unit**

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 25-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-893)  
Paper No(s)/Mail Date 3/26/08, 2/19/09
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 19, 2009 has been entered.

### ***Information Disclosure Statements***

2. The information disclosure statements (IDS) submitted on March 28, 2008 and February 19, 2009 were filed after the mailing date of the final action on March 27, 2008. The submissions are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1-24 have been considered but are moot in view of the new ground(s) of rejection prompted by applicant's submission of an information disclosure statement.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly

connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. With regard to independent claim 1, there is no support in the disclosure as originally filed for an absorbent material having a withdrawal end having a liquid-resistant zone. Claims 2-15 are also rejected because they directly or ultimately depend from claim 1.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 7, 9, 22 and 24 recite the limitation "the liquid-impermeable zone". There is insufficient antecedent basis for this limitation in the claim. Claims 8 and 23 depend from claims 7 and 22, respectively, and are therefore also rejected.
8. Claims 8 and 23 recite the limitation "the nonwoven web". There is insufficient antecedent basis for this limitation in the claim because claims 8 and 23 depend from claims 7 and 22 respectively and thus include the limitations of a first nonwoven web and a second nonwoven web. It is unclear therefore which nonwoven web the phrase "the nonwoven web" is referring to.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-7 and 9-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Buzot (U.S. Patent Application Publication No. 2002/0142693).

With respect to **claim 1**: Buzot discloses a tampon 10 having an introduction end indicated generally by reference character 30 in Fig. 1 and an opposite withdrawal end, the tampon 10 comprising a compressed absorbent structure 40 having an insertion end and an opposite withdrawal end. With regard to the limitation "an opposite withdrawal end having a liquid-resistant zone", in light of the lack of support for this limitation the claim is given its broadest reasonable interpretation. The absorbent material in the withdrawal end is considered herein to have a liquid-resistant zone inasmuch as it slows the flow of the liquid through the tampon and does not act passively with respect to the flow of liquid. The absorbent structure comprises the following: an absorbent material 40 having a length, a width defined from a first edge corresponding to the introduction end of the tampon to a second edge corresponding to the withdrawal end of the tampon, and a thickness (Fig. 1, ¶0011); and an overwrap material collectively defined by upper portion 30 and lower portion 20 disposed on the absorbent material 40, wherein the overwrap material has a length greater than the length of the absorbent material (Fig. 1) and a width generally corresponding to the width of the absorbent material and comprises a liquid-permeable zone, namely upper portion 30, and a liquid-resistant zone,

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namely liquid-impermeable lower portion 20 (¶0014); and wherein the liquid-resistant zone 20 of the overwrap material forms a fold over the second edge of the absorbent material inasmuch as Buzot discloses that lower portion 20 is "acorn-shaped, i.e. a form which is susceptible of being folded easily" and wherein the second edge of the overwrap 30,20 defined by the lowermost edge of lower portion 20 corresponds to the withdrawal end of the tampon as the term "corresponds" is understood from applicant's disclosure. (Fig. 1, ¶¶0019,0022)

With respect to **claim 2**: The absorbent material 40 disclosed by Buzot comprises a fibrous web. (¶0031)

With respect to **claim 3**: The overwrap material 30,20 comprises a nonwoven fibrous web. (¶0025)

With respect to **claim 4**: The overwrap material 30,20 disclosed by Buzot comprises at least two webs, fibrous net upper portion 30 and fabric lower portion 20 joined together at junction 32 between the fold, which would necessarily be located below the second edge of the absorbent material, and the first edge of the absorbent material. (¶¶0011,0024)

With respect to **claim 5**: Buzot discloses a first web, upper portion 30 that is a nonwoven web that forms the liquid-permeable zone. (¶0014)

With respect to **claim 6**: Buzot discloses a first web, upper portion 30, that is an apertured film that forms the liquid-permeable zone. (¶¶0014,0025)

With respect to **claim 7**: A second web of the at least two webs disclosed by Buzot is a nonwoven web, namely lower portion 20, that forms the liquid-impermeable zone.

(¶¶0014,0018)

With respect to **claim 9**: A second web of the at least two webs disclosed by Buzot is a polymeric film, namely lower portion 20, that forms the liquid-impermeable zone. (¶¶0014,0018)

With respect to **claim 10**: The overwrap material disclosed by Buzot and collectively formed by upper portion 30 and lower portion 20 comprises a plastic film inasmuch as lower portion 20 is made of thermoplastic film. (¶¶0018)

With respect to **claim 11**: The length of the absorbent material 40 is greater than its width inasmuch as it is formed from a rectangular web that is rolled into a cylindrical form. (¶¶0034)

With respect to **claim 12**: The tampon 10 disclosed by Buzot comprises a spirally wound, compressed absorbent structure 40. (¶¶0032,0034)

With respect to **claim 13**: In light of the lack of any clear and explicit definition of the phrase "generally corresponding to" in applicant's disclosure, the claim is given its broadest reasonable interpretation. The overwrap material 30,20 has a width, measured parallel to the width of the absorbent material, generally corresponding to the width of the absorbent material 40 inasmuch as it exceeds the width by a length sufficient enough to form a fold at the second edge of the absorbent material. (Fig. 1)

With respect to **claim 14**: As can be seen in Fig. 1 of Buzot, the width of the overwrap material 30,20 is not less than the width of the absorbent material 40.

With respect to **claim 15**: The liquid-resistant zone 20 disclosed by Buzot comprises a liquid-impermeable structure, namely a liquid impermeable fabric or film. (§0018)

11. Claims 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown, Jr. (U.S. Patent No. 5,185,010).

With respect to **claim 16**: Brown discloses a method of forming a tampon having an introduction end and an opposite withdrawal end. The method comprises the following steps: attaching a length of overwrap material 10 having a liquid-permeable zone overlying the absorbent surface of material 12 and a liquid-resistant zone in the form of tab 14 to an absorbent material 12 to form a laminate, the absorbent material 12 having a length, a width defined from a first edge corresponding to the introduction end of the tampon to a second edge corresponding to the withdrawal end of the tampon (Figs. 1a-e, Col. 2, lines 47-58); folding a portion of the liquid-resistant zone 14 over the second edge 18 of the absorbent material (Col. 2, lines 59-61); and forming the laminate into a tampon via spiral winding of the laminate, wherein the folded portion of the liquid-resistant zone 14 of the overwrap material 10 is located at the withdrawal end of the tampon. (Col. 2, lines 67,68)

With respect to **claim 17**: The step of attaching via formation of seals 16, 24 and 26 disclosed by Brown comprises heat-sealing, i.e. thermobonding. (Col. 3, lines 27-29)

With respect to **claim 18**: The step of attaching via formation of seals 16, 24 and 26 disclosed by Brown comprises adhesive bonding. (Col. 3, lines 51-53)

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

14. Claims 8, 16, and 19-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buzot ('693).

With respect to **claim 8**: Buzot discloses that the nonwoven web 20 includes a coated fabric and that the materials include film forming materials such as polypropylene which is liquid-impermeable. Thus, while Buzot does not explicitly disclose a coated fabric wherein the coating is any of the materials listed, all of which are liquid-impermeable, it would be obvious to one of ordinary skill in the art to modify the article of Buzot such that the coated fabric of nonwoven

web lower portion 20 is a fabric with a coating of any of the materials disclosed with a reasonable expectation of success to accomplish the intended goal of a lower portion that is liquid impermeable to prevent unwanted migration of bodily fluid to the user's garments. (§0018)

With respect to **claim 16**: Buzot discloses a method of forming a tampon 10 having an introduction end and an opposite withdrawal end. The method comprises the following steps: attaching a length of overwrap material defined by upper portion 30 and lower portion 20 joined to one another at junction 32 having a liquid-permeable zone (upper portion 30) and a liquid-resistant zone (lower portion 20) to an absorbent material 40 to form a laminate, the absorbent material 40 being a fabric web having a length, a width defined from a first edge corresponding to the introduction end of the tampon to a second edge corresponding to the withdrawal end of the tampon (§0014,0032,0034); folding a portion of the liquid-resistant zone over the second edge of the absorbent material using one's fingers (§0022). The folded portion of the liquid-resistant zone 20 of the overwrap material is located at the withdrawal end of the tampon 10. (§0022)

With regard to the step of "forming the laminate into a tampon, wherein the folded portion of the liquid-resistant zone of the overwrap material is located at the withdrawal end of the tampon", Buzot discloses attaching the overwrap to an already rolled and compressed pledget and therefore does not disclose the step of forming a laminate of the overwrap and absorbent into a tampon, wherein the folded portion of the liquid-resistant zone of the overwrap material is located at the withdrawal end of the tampon. However, since forming the laminate first before compressing would yield an identical article and it is equally well known in the art to produce a tampon either by rolling and compressing a laminate or by first compressing a pledget and then attaching an overwrap thereto, it would be obvious to one of ordinary skill in

the art to modify the method of Buzot to include the step of forming a laminate of the absorbent material and overwrap into a tampon, wherein the folded portion of the liquid-resistant zone of the overwrap material is located at the withdrawal end of the tampon with a reasonable expectation of success to provide an alternate and equally effective method of producing the same article. In the instant case substitution of equivalent methods requires no express motivation, as long as the prior art recognizes equivalency, *In re Fount* 213 USPQ 532 (CCPA 1982); *In re Siebentritt* 152 USPQ 618 (CCPA 1967); *Graver Tank & Mfg. Co. Inc. v. Linde Air Products Co.* 85 USPQ 328 (USSC 1950).

With respect to **claim 19**: The overwrap material 30,20 disclosed by Buzot comprises at least two webs, namely upper portion 30 and lower portion 20, joined together at junction 32 between the fold and the first edge of the absorbent material. It is examiner's position that, while Buzot is silent regarding the exact location of the junction, the junction is necessarily between the fold and the first edge, as the fold would necessarily be located below the second edge of the absorbent material, and the first edge of the absorbent material. (¶¶0011,0024)

With respect to **claim 20**: Buzot discloses a first web, upper portion 30 that is a nonwoven web that forms the liquid-permeable zone. (¶0014)

With respect to **claim 21**: Buzot discloses a first web, upper portion 30, that is an apertured film that forms the liquid-permeable zone. (¶¶0014,0025)

With respect to **claim 22**: A second web of the at least two webs disclosed by Buzot is a nonwoven web, namely lower portion 20, that forms the liquid-impermeable zone.

(¶¶0014,0018)

With respect to **claim 23**: Buzot discloses that the nonwoven web 20 includes a coated fabric and that the materials include film forming materials such as polypropylene which is liquid-impermeable. Thus, while Buzot does not explicitly disclose that the nonwoven web 20 is treated to be liquid-impermeable, it would be obvious to one of ordinary skill in the art to modify the article of Buzot such that the coated fabric of nonwoven web lower portion 20 is a fabric with a coating of any of the materials disclosed with a reasonable expectation of success to accomplish the intended goal of a lower portion that is liquid impermeable to prevent unwanted migration of bodily fluid to the user's garments. (¶0018)

With respect to **claim 24**: A second web of the at least two webs disclosed by Buzot is a polymeric film, namely lower portion 20, that forms the liquid-impermeable zone. (¶¶0014,0018)

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/  
Examiner, Art Unit 3761